

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 24-mj-8101-RMM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERSON OBED ARGUETA,

Defendant.

FILED BY SP D.C.

Mar 7, 2024

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - West Palm Beach

CRIMINAL COVER SHEET

1. Did this matter originate from a matter pending in the Miami Office of the United States Attorney's Office prior to July 20, 2008?

Yes ☐ **X No**

2. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office (West Palm Beach Office) only prior to December 18, 2011?

Yes ☐ **X No**

3. Did this matter originate from a matter pending in the Fort Pierce Office of the United States Attorney's Office prior to August 8, 2014?

Yes ☐ **X No**

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

BY:


JOHN C. McMILLAN

ASSISTANT UNITED STATES ATTORNEY

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UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America)

v.)

GERSON OBED ARGUETA,)

Case No. 24-mj-8101-RMM)

Defendant(s)

FILED BY SP D.C.

Mar 7, 2024

ANGELA E. NOBLE
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CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of February 10, 2024, in the county of Palm Beach in the
Southern District of Florida, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. §§ 922(g)(5)(A), 924(a)(8)
 18 U.S.C. §§ 922(j), 924(a)(2)

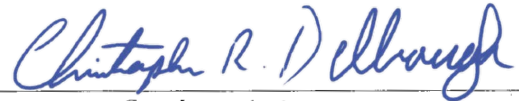
Illegal Alien in Possession of a Firearm and Ammunition; and
 Possession of a Stolen Firearm Transported in Interstate Commerce

This criminal complaint is based on these facts:

See attached Affidavit

☒ Continued on the attached sheet.

Type text here



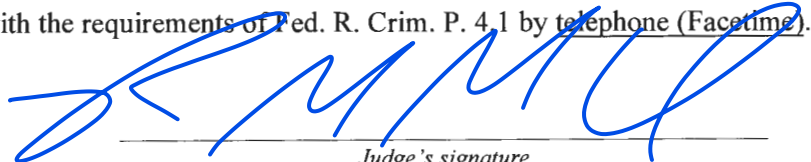
Complainant's signature

Christopher Delbaugh, Deportation Officer, ICE

Printed name and title

Subscribed and sworn to before me in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone (Facetime).

Date:

3/7/24

Judge's signature

City and state: West Palm Beach, Florida

Hon. Ryon M. McCabe, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

Case No. 24-mj-8101-RMM

I, Christopher Delbaugh, being duly sworn, do solemnly swear and state that:

1. I am a Deportation Officer of the United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”), and have been employed in a similar capacity since 2015. I am currently assigned to Enforcement and Removal Operations, Fugitive Operations Team, Stuart, Florida. As a Deportation Officer with ICE, my duties and responsibilities include enforcing criminal and administrative immigration laws of the United States. I have also conducted and participated in investigations of this nature. Previously, from September 2007 to September 2015, I was an Immigration Enforcement Agent with ICE. As an Immigration Enforcement Agent my duties and responsibilities also included enforcing criminal and administrative immigration laws of the United States.

2. As part of my training as a Deportation Officer, I attended the United States Immigration and Customs Enforcement Academy, at the Federal Law Enforcement Training Center, in Glynco, GA. In addition, I received specialized training regarding the investigation and enforcement of United States criminal and immigration laws. In my capacity as a Deportation Officer, I am charged with enforcing federal administrative and criminal laws under Titles 8, 18, and 19 of the United States Code. Further, as a federal law enforcement officer, I have the authority to conduct investigations, make arrests, execute search warrants, and take sworn statements.

3. This affidavit is based upon my own knowledge, as well as information provided to me by other law enforcement officers. The information set forth in this affidavit is not intended to detail all facts and circumstance of the investigation known by me or other law enforcement personnel. Rather, this affidavit serves solely to establish that there is probable cause to believe that Gerson Obed ARGUETA (“ARGUETA”) committed the offenses of being an unlawful alien

in possession of a firearm and ammunition in violation of Title 18, United States Code, Section 922(g)(5). Additionally, ARGUETA received and possessed a stolen firearm, which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen. in violation of Title 18, United States Code, Section 922(j).

PROBABLE CAUSE

4. On February 10, 2024, the Boca Raton Police Department responded to 6000 W. Glades Rd (Town Center Mall) reference a stolen vehicle. Upon arrival to the scene, the victim, identified as AP, advised that his 2023 white BMW I4 bearing FL tag: NWAH27 had been taken from the mall parking lot. Additionally, the victim advised officers that the vehicle contained his firearm, identified as a Smith & Wesson M&P Shield (SN: HUT4577) as well as various professional property.

5. Continuing on February 10, 2024, law enforcement tracked the BMW via onboard Global Positioning System (GPS) through the manufacturer to Lake Worth, Florida. Palm Beach County Sheriff's Office (PBSO) Aviation Unit located the BMW at Forest Hill Blvd and Military Trail. The BMW was surveilled to the City of West Palm Beach entering a parking garage located at the Southwest corner of Dixie Highway and Banyan Blvd ("City Center Garage"). Your affiant is aware that this location is geographically located in Palm Beach County and the Southern District of Florida. Upon entering the parking garage, PBSO South Florida Task Force (SFTF) Agents followed the vehicle and observed the BMW back into a parking spot on the third floor. Upon parking, the driver, who was the sole occupant identified as a white male wearing a black jersey shirt and blue pants, subsequently identified as defendant ARGUETA, exited the BMW.

6. After exiting, the ARGUETA identified approaching Agents, who were clad in tactical uniforms with external body armor vests displaying badges and police/sheriff insignia, and fled on foot through the parking garage. This chase was recorded on SFTF personnel Body Worn Camera (BWC). As ARGUETA ran in flight, PBSO SFTF Agents gave multiple lawful commands to stop while identifying as law enforcement. ARGUETA, however, ignored law enforcements commands and fled from the parking garage onto the street. PBSO SFTF Agents apprehended the driver in the vicinity of 355 Clematis Street.

7. During a search incident to arrest, PBSO SFTF Agents were informed by the suspect that he had a firearm and identified it printing through his left pant leg in the knee area. The driver's pants were cut to retrieve the firearm, which was identified as a Springfield Hellcat 9mm (SN:BY571261). The firearm was loaded with eight (8) Luger 9mm "Radically Invasive Projectile" (RIP) style rounds. The firearm was cleared on scene and placed into PBSO evidence for trial along with the suspect's cellular phone. Photo images of the recovery of the firearm taken from BWC (below left), the recovered Hellcat firearm (below center), and recovered RIP 9mm rounds are depicted below:



8. While on scene, the driver falsely identified himself as Gerson ALEMAAN, but was subsequently identified through biometrics as Gerson Obed ARGUETA (“ARGUETA”), a Honduran national who was illegally residing in the United States. ARGUETA was read his *Miranda* warnings by PBSO SFTF Agent Vandermeeren Sanchez in the English language, which ARGUETA speaks fluently, and transported to PBSO District 16 Greenacres for processing. While at the District, PBSO SFTF Agent Vandermeeren Sanchez conducted a post-*Miranda* interview with ARGUETA. During the interview, ARGUETA admitted that he is not allowed to own a firearm and claimed to have purchased the firearm found on him during the arrest for \$500, from what he believed to be a minor child on the street.

9. On February 12, 2024, PBSO SFTF Agent Harrison Budish submitted a search warrant affidavit for ARGUETA’s iPhone 14 Pro. The warrant was issued by Palm Beach County Judge Ashley Zuckerman on February 12, 2024. PBSO Forensics conducted a search of the iPhone utilizing Cellebrite digital forensic technology. A review of the data recovered through Cellebrite revealed photographic evidence taken on February 10, 2024, at 4:19 p.m., depicted below, showing a green Springfield Hellcat (recovered during arrest) and a black Smith & Wesson M&P Shield on ARGUETA’s lap in the stolen BMW. Upon zooming in on the picture, the serial number of the Smith & Wesson M&P Shield can be read as HUT4577, which is the serial number of the firearm stolen from the victim vehicle owner, AP.



Close up of serial number HUT4577

10. Further search of ARGUETA's cellular phone revealed that he texted the photo of the stolen firearm to his girlfriend ("AG") and to a contact identified in his phone as "Mini Narco." In the texts to his girlfriend AG, ARGUETA acknowledges his possession of the BMW and the Smith & Wesson firearm. Later texts to Mini Narco revealed digital images of the stolen Smith & Wesson, and Mini Narco asking ARGUETA much would ARGUETA wanted to sell the firearm prior to arriving to Mini Narco's location. It should be noted that the photo of the firearms was taken in the vicinity of Lantana Rd and Congress Ave at 4:19 PM, which is only 26 minutes after PBSO determined the BMW was stolen in Boca Raton. Your affiant is aware that this location is geographically located in Palm Beach County and the Southern District of Florida.

11. During the investigation your affiant reviewed ARGUETA's immigration records, which revealed that he is a native and citizen of Honduras who illegally entered the United States at an unknown place and unknown time without valid entry documents. On January 12, 2021,

ARGUETA was served with a Notice to Appear (NTA) by Deportation Officers after being interdicted at the Palm Beach County Jail for grand theft auto charges. The NTA notified ARGUETA that he was being charged with the following violations of the Immigration and Nationality Act and that he was not legally present in the United States:

- *212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.*
- *212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.*


12. Said records further establish that on May 17, 2023, Immigration Judge Marsha Nettles presided over ARGUETA's immigration hearing in Miami, Florida. After reviewing the facts presented by ICE Prosecutors and because ARGUETA failed to attend his immigration court hearing, Judge Nettles ordered his removal from the United States to Honduras.

13. On March 4, 2024, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (SA) Vincent Rubbo who has previously been qualified to testify as an expert witness in the interstate commerce nexus of firearms and ammunition, examined the aforementioned firearms and ammunition. SA Rubbo advised your affiant that based on his training and experience, as well as the manufacturers' markings on said items, that the firearms (Springfield Hellcat and Smith & Wesson M&P Shield) and ammunition (G2 RIP Ammo) was

manufactured outside the state of Florida, and therefore, both the pistols and the ammunition traveled in interstate and/or foreign commerce.

14. Based upon the foregoing, your Affiant submits that there is probable cause to believe that on February 10, 2024, Gerson Obed ARGUETA, then being an alien illegally and unlawfully in the United States, did knowingly possess two firearms, in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Section 922(g)(5)(A). Additionally, your Affiant submits that there is probable cause to believe that on February 10, 2024, Gerson Obed ARGUETA, received and/or possessed a stolen firearm, which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen. in violation of Title 18, United States Code, Section 922(j).

FURTHER YOUR AFFIANT SAYETH NAUGHT.


CHRISTOPHER DELBAUGH
DEPORTATION OFFICER
IMMIGRATION AND CUSTOMS ENFORCEMENT

ATTESTED TO ME TELEPHONICALLY
(VIA FACETIME) BY THE APPLICANT
IN ACCORDANCE WITH THE REQUIREMENTS
OF FED. R. CRIM. P. 4.1 THIS 7
DAY OF MARCH, 2024.


HON. RYON M. McCABE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Gerson Obed ARGUETA

Case No: _____

Count # 1

Illegal Alien in Possession of a Firearm and Ammunition

Title 18, United States Code, Sections 922(g)(5)(A), 924(a)(8)

- * **Max. Term of Imprisonment:** Fifteen (15) years
- * **Mandatory Min. Term of Imprisonment (if applicable):** not applicable
- * **Max. Supervised Release:** Three (3) years
- * **Max. Fine:** \$250,000.00
- * **Special Assessment:** \$100.00

Count # 2

Possession of a Stolen Firearm Transported in Interstate Commerce

Title 18, United States Code, Sections 922(j), 924(a)(2)

- * **Max. Term of Imprisonment:** Ten (10) years
- * **Mandatory Min. Term of Imprisonment (if applicable):** not applicable
- * **Max. Supervised Release:** Three (3) years
- * **Max. Fine:** \$250,000.00
- * **Special Assessment:** \$100.00